

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness	)	CC Docket No. 01-92
Of Incumbent Local Exchange Carrier	)	
Wireless Termination Tariffs	)	
	)	
Interconnection Between Local Exchange Carriers	)	CC Docket No. 95-185
And Commercial Mobile Radio Service Providers	)	
	)	
Implementation of the Local Competition Provisions)	)	CC Docket No. 96-98
In the Telecommunications Act of 1996	)	

**COMMENTS OF:**

**THE OKLAHOMA RURAL TELEPHONE COMPANIES**

**Atlas Telephone Company  
Beggs Telephone Company  
Bixby Telephone Company, Inc.  
Canadian Valley Telephone Company  
Carnegie Telephone Company  
Central Oklahoma Telephone Company  
Cherokee Telephone Company  
Chickasaw Telephone Company  
Cimarron Telephone Company  
Cross Telephone Company  
Dobson Telephone Company  
Grand Telephone Company  
Hinton Telephone Company  
KanOkla Telephone Association  
McLoud Telephone Company  
Medicine Park Telephone Company  
Oklahoma Telephone & Telegraph, Inc.  
Oklahoma Western Telephone Company  
Panhandle Telephone Cooperative, Inc.  
Pinnacle Communications  
Pioneer Telephone Cooperative, Inc.  
Pottawatomie Telephone Company  
Salina-Spavinaw Telephone Company  
Santa Rosa Telephone Cooperative, Inc.  
Shidler Telephone Company**

**South Central Telephone Association  
Southwest Oklahoma Telephone Company  
Valliant Telephone Company**

The above Oklahoma Rural Telephone Companies (collectively “Oklahoma RTCs”), by and through their undersigned attorneys, hereby submit their comments in response to the Petition for Declaratory Ruling (“Petition”) filed herein by certain providers of commercial mobile radio service (collectively “CMRS Providers”).<sup>1</sup> For the reasons presented herein, the Oklahoma RTCs urge the Commission to dismiss the Petition with prejudice and reaffirm a carrier’s right to file tariffs governing the termination of telecommunications traffic in the absence of a negotiated agreement.

As described in the Petition, many CMRS carriers interconnect with the public switched network using Type 2 interconnection with a Regional Bell Operating Company (“RBOC”). Prior to the passage of the Telecommunications Act of 1996<sup>2</sup>, this type of interconnection was provided pursuant to Radio Common Carrier tariffs filed by RBOCs and other local exchange carriers and approved by State Commissions. After the passage of the federal Act, Type 2 interconnection between CMRS carriers and RBOCs was largely replaced by the negotiation and agreement process developed by the federal Act. Although interconnection by agreement has become the most common basis, some instances remain where CMRS carriers continue to purchase Type 2 interconnection under tariff.

Under Type 2 interconnection, the CMRS carrier connects directly with the LATA tandem operated by the RBOC. This allows the CMRS carrier to exchange traffic directly with the RBOC and provides the CMRS carrier the opportunity to send traffic

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<sup>1</sup> The CMRS Petitioners include: T-Mobile USA, Inc.; Western Wireless Corporation; Nextel Communications and Nextel Partners.

<sup>2</sup> Telecommunications Act of 1996 (“federal Act”) Pub. L. 104-1-4, 110 Stat. 56.

over the RBOC's network to other carriers served by the RBOC tandem. CMRS carriers generally compensate the RBOC either pursuant to tariff or by agreement, for the RBOC's transport and termination of calls originating on the CMRS carrier's network. CMRS carriers also compensate the RBOC for its provision of transit services used to deliver traffic for termination on third parties' networks including ILECs' networks. The problem with this type of interconnection is that the opportunity to deliver traffic to third party networks created by Type 2 connections does not provide compensation to that third party. Moreover, the third party ILEC does not receive compensation under the agreement between the CMRS carrier and the RBOC because the ILEC is not a party to the agreement. As a result, the ILEC must seek to receive compensation for the transport and termination of CMRS carrier traffic on its network through its own agreement with the CMRS carrier or by tariff where the responsible CMRS carrier cannot be identified in the commingled traffic.

Under the Commission's rules, where a carrier seeks to exchange traffic with another carrier, an interim arrangement can be established to begin the flow of traffic subject to true-up once final rates are established by the state Commission.<sup>3</sup> With Type 2 connections used by CMRS carriers, however, CMRS carriers began terminating traffic on ILEC networks pursuant to tariff or agreement between the ILEC and the tandem owner prior to the passage of the federal Act and prior to the Commission's rule governing the rates for transport and termination of traffic. In Oklahoma, SWBT delivered CMRS carrier's traffic to ILECs for termination and the ILECs terminated such traffic pursuant to agreement requiring SWBT to share compensation from tariffed charges with the Oklahoma RTCs. Thus, each carrier received compensation for the

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<sup>3</sup> 47 C.F.R. §51.715

costs incurred to transport and terminate CMRS carrier traffic. However, after the passage of the federal Act and the adoption of the Commission's rules, SWBT terminated such agreements and instead negotiated rates for the transport and termination of CMRS carrier traffic and rates for using the SWBT network to connect indirectly with ILECs. These agreements required that the CMRS carrier would enter into agreements with the ILEC or obtain some other authority prior to sending traffic to SWBT for termination on another carrier's network. The CMRS carriers never initiated discussions with the Oklahoma RTCs to obtain authority to terminate traffic on their networks. Instead, the CMRS carriers knowingly delivered such traffic to SWBT for termination on the ILEC networks without agreement with the ILEC and contrary to their agreements with SWBT permitting use of the tandem.

Because CMRS carrier traffic delivered over tandem-routed facilities is generally comingled with other interexchange traffic, it is difficult and sometimes impossible for the ILEC to identify the CMRS carrier responsible for calls delivered over transiting facilities. Therefore, the ILEC is not in a position to initiate negotiations for an agreement covering the transport and termination of CMRS carrier traffic. In fact, it was not until SWBT was required to develop a tracking and reporting mechanism by the Oklahoma Corporation Commission, that Oklahoma RTCs were able to identify carriers delivering traffic over transiting facilities.<sup>4</sup> CMRS carriers, on the other hand know which carriers are subtending the RBOC tandem to which it is directly connected. Further, the CMRS carrier knows that the traffic is being delivered to such carriers without an agreement to compensate such carriers for the transport and termination of the

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<sup>4</sup> Oklahoma Corporation Commission of the State of Oklahoma, In the Matter of the Application of Atlas Telephone Company, Et Al. For Approval of Tariffs, *Final Order*, Order No. 455901, Cause No. PUD 980000263.

CMRS carrier's traffic. Hence, until either the CMRS carrier decides to recognize its public duty to notify the subtending ILEC or the ILEC becomes capable of identifying the CMRS carrier responsible for such traffic and requires the RBOC to block delivery of such traffic until an arrangement for the transport and termination of traffic is reached with the ILEC, the traffic will flow without authority or compensation to the terminating ILEC. This could hardly be characterized as an arrangement wherein the ILEC has waived its right to recover costs associated with transport and termination of traffic; i.e., bill and keep, as suggested by the CMRS carriers.<sup>5</sup>

Where the ILEC cannot identify the carrier responsible for the traffic and the carrier refuses to step forward and claim responsibility for such traffic by seeking to establish terms by agreement, this leaves the ILEC with no alternative but to establish generic terms, conditions and rates for transport and termination of all such traffic. These generic terms and conditions are best resolved in a tariff – the public equivalent of an individually negotiated agreement. Offering transport and termination pursuant to tariff is consistent with the Commission's finding that a carrier has three ways to establish a duty to pay charges: pursuant to (1) Commission rule, (2) tariff; or (3) contract.<sup>6</sup> Such an arrangement is the only resolution that complies with Section 252 of the federal Act and the Commission's rules. A tariff would establish a benchmark that carriers must pay to exchange traffic with one another over such indirectly connected facilities. Carriers would still be free to negotiate agreements governing the transport and termination of traffic. In the meantime, if a tariff is in existence, the traffic can continue to flow without an agreement and without economic harm to an ILEC. Therefore, the Commission

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<sup>5</sup> Petition at p. 3

<sup>6</sup> See; e.g., *In the Matter of Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, FCC 02-203, released July 3, 2002.

should affirm an ILEC's right to file tariffs governing the transport and termination of CMRS traffic in the absence of an agreement.

Alternatively, the RBOC could act as the clearinghouse for compensation between the CMRS carrier and the ILEC for traffic that it delivers to an ILEC over tandem-routed facilities. Because the RBOC has the capability of identifying the carriers responsible for the traffic, it could issue bills and enforce payment of such bills through blocking of traffic delivered from carriers that fail to pay compensation for transport and termination of traffic delivered over its tandem. The drawback to this method is that the appropriate rates to be charged would still be at issue and a surrogate for actual costs would be required. Tariffs, therefore, remain the most efficient and most economic method of compensating ILECs for the costs incurred from the transport and termination of CMRS traffic that transits an RBOC tandem. Tariffs are supervised by state Commissions and a forum exists to resolve complaints over rates and charges between carriers.

Traffic delivered over tandem-routed facilities should not be exchanged on a bill and keep basis by default. The Commission has established rules which provide compensation pending the completion of negotiations.<sup>7</sup> Such rules do not allow a carrier to unilaterally impose bill and keep on another carrier. Rather, such rules provide rates to be applied on an interim basis until permanent rates are established. Moreover, as discussed above, CMRS traffic has not been terminated by ILECs on a bill and keep basis in the past. Rather, ILECs were compensated under agreements with the RBOC sending traffic over its tandem-routed facilities to the ILEC. Simply because CMRS carriers have not sought to avail themselves of the provisions of the federal Act to establish

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<sup>7</sup> 47 C.F.R. §51.715

arrangements with the ILECs that allow mutual recovery of costs is not a sufficient reason to deny the ILECs of their right to recovery of such costs under the federal Act and the Constitution. The fact is that CMRS carriers have taken advantage of their ability to terminate calls over tandem-routed facilities and remained silent because, due to the traffic imbalance with ILECs, the balance of reciprocal compensation payments would shift to the ILECs, thus imposing additional costs on the CMRS carriers. This is why once ILECs have been able to identify the carrier responsible for such traffic, the ILECs have sought compensation either in the form of tariffed rates or rates established by agreement.

An interconnection agreement with the RBOC that provides a transit service enabling the termination of traffic on third parties networks does not supplant a CMRS carrier's obligations under the federal Act. Although Section 251(a) of the federal Act allows carriers to connect directly or indirectly with each other, the termination of traffic over such facilities is subject to rates that provide for the mutual recovery of costs associated with the transport and termination of such traffic.<sup>8</sup> Since CMRS carriers have not sought to establish arrangements for the transport and termination of traffic with ILECs despite the fact that they have knowingly delivered traffic to the RBOC for termination on ILEC networks, the only lawful means of recovering the costs of transport and termination is through a generic tariffed offering. Hence, a tariff is a lawful method of seeking compensation from a carrier in the absence of an agreement.

CMRS carriers must have an arrangement with a third party before it is permitted under the agreement to send traffic over the RBOC's tandem-routed facilities to such

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<sup>8</sup> 47 U.S.C. §252(d)(2)(A).

third party.<sup>9</sup> While the opportunity to send traffic to third parties arises by the nature of a Type 2 connection, some other relationship must be established between the CMRS carrier and the ILEC to provide the authority to deliver traffic via the indirect connection. Moreover, both the federal Act and the Commission's rules recognize that bill and keep is not appropriate for such traffic unless the parties agree to waive recovery of costs.<sup>10</sup> The Oklahoma RTCs submit that absent a tariff, agreement or Commission order, no such authority exists.

The CMRS carrier/RBOC interconnection agreement cannot adversely affect the rights of other carriers that are not parties to the agreement. In fact a state Commission is required to reject an agreement submitted for approval pursuant to Section 252 of the federal Act, if the agreement discriminates against a non-party. As a result, agreements between CMRS carriers and RBOCs providing Type 2 connections and associated transit services cannot, consistent with federal law, be construed against the rights of the subtending ILECs. The mere fact that CMRS carriers deliver traffic to the RBOC for termination on ILEC networks does not give CMRS carriers the right to have such traffic terminated without compensation to the terminating ILEC. This is why as soon as practicable after discovering the carrier responsible for such traffic, the Oklahoma RTCs issued bills to the CMRS carriers for transport and termination using their only lawful rate applicable to interexchange traffic. Hence, there has been no agreement, tacit or otherwise, providing a bill and keep arrangement between the CMRS carriers and the Oklahoma RTCs connected to the RBOC tandem switch.

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<sup>9</sup> See, e.g., Interconnection Agreement between SWBT and AT&T Wireless at pp. 7-11, approved by the Oklahoma Corporation Commission in Order No. 413096, Cause No. PUD 97-126.

<sup>10</sup> 47 U.S.C. §252(d)(2)(B)(i); 47 C.F.R. §51.713(a).



As the Commission rules provide, bill and keep is only appropriate when traffic volumes are roughly balanced and is expected to remain so.<sup>11</sup> Contrary to the implication by the CMRS carriers, the Oklahoma Corporation Commission did not award bill and keep on a permanent basis in a recent arbitration. Rather, the Oklahoma Commission provided that traffic would flow on a bill and keep basis pending a demonstration by the Oklahoma RTCs of actual traffic imbalance and the presentation of cost studies in support of a rate for transport and termination.<sup>12</sup> The Oklahoma RTCs conducted a sample of traffic between four CMRS carriers and the Oklahoma RTCs and found that traffic is not roughly balanced between the parties. Rather, the studies demonstrated that traffic is grossly imbalanced between the CMRS carriers and Oklahoma RTCs on the magnitude of nearly 5 times more CMRS traffic terminating to Oklahoma RTC networks than traffic flowing the opposite direction. Hence, bill and keep is not an appropriate compensation mechanism and does not comport with federal law or the Commission's rules.

The economics of exchanging bills between the parties is not the standard of review to impose bill and keep on ILECs. As the Commission recognized, bill and keep is not appropriate where traffic volumes are imbalanced.<sup>13</sup> Where traffic is imbalanced, the carrier terminating larger volumes of traffic incurs more costs, yet under bill and keep, such carrier is denied the ability to recover such costs from the carrier causing the costs. The CMRS carriers claim that, traffic volumes are insignificant in support of their

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<sup>11</sup> 47 C.F.R. §51.713.

<sup>12</sup> Corporation Commission of the State of Oklahoma, In The Matter of Application of Southwestern Bell Wireless L.L.C. et al, For Arbitration Under the Telecommunications Act of 1996, Cause Nos. PUD 200200149, 200200150, 200200151, and 200200153, *Interlocutory Order*, Order No. 466613, August 9, 2002.

<sup>13</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325 (hereinafter referred as "*Local Competition Order*").

argument that it is uneconomic to render bills for transport and termination of traffic and thus, bill and keep makes more sense.<sup>14</sup> The volumes of CMRS traffic terminated by a single ILEC are significant to a small rural ILEC serving a limited geographic area. The fact that such traffic is insignificant to a national carrier such as a CMRS carrier is immaterial to a decision regarding the billing for transport and termination of CMRS carrier traffic by ILECs. Furthermore, the traffic that the CMRS carriers claim is *de minimus* in support of their argument for bill and keep with ILECs is the same traffic for which the CMRS carriers pay transiting charges to RBOCs. Therefore, the CMRS carrier's argument to avoid payment of charges to transport and terminate traffic to ILECs is disingenuous and unsupported in law, by economic principles or by the CMRS carriers' own actions with respect to this traffic.

Contrary to claims by the CMRS carriers in their Petition, CMRS carriers and Oklahoma RTCs are not co-carriers.<sup>15</sup> Reciprocal compensation would apply when Oklahoma RTCs and CMRS carriers are co-carriers for the telecommunications traffic exchanged between the carriers. Co-carrier means that the CMRS carrier is the customer's carrier<sup>16</sup> and originates the traffic when the traffic is mobile to landline and the RTC is the customer's carrier and originates the traffic when the traffic is landline to mobile. In this instance, reciprocal compensation would be appropriate whether the interconnection between the co-carriers is direct or indirect over tandem routed facilities owned by SWBT in the case of Oklahoma RTCs.

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<sup>14</sup> Petition at p. 4.

<sup>15</sup> Petition at p. 8.

<sup>16</sup> The customer's carrier has a retail relationship with the customer under which the carrier is responsible for allowing the customer to originate and complete a call, correcting service problems, billing the customer for the carrier's service, etc. Revenue generated from the customer is used by the carrier to recover its costs of providing service and to pay other carriers when necessary for the use of their facilities to transport and terminate the carrier's traffic.

Oklahoma RTCs are not co-carriers, they do not originate interexchange calls for customers that are terminated on the CMRS carrier's networks, and consequently, they do not owe compensation to the CMRS carriers for traffic terminated on the CMRS carrier's networks.<sup>17</sup> Pursuant to Oklahoma Commission Orders,<sup>18</sup> the Oklahoma RTCs are access providers who (a) make their transport and terminating network facilities available to all carriers, including the CMRS Providers to allow them to terminate their customers calls and (b) allow IXC and toll providers to utilize the RTCs' network facilities to originate their customers interexchange calls, including those destined for CMRS carriers. Unlike the CMRS carriers that do have customers for which they originate calls that terminate calls on the RTCs' network, the Oklahoma RTCs have no customers that originate calls that terminate on the network of the CMRS carriers.<sup>19</sup> Instead, these calls are IXC or toll provider calls. It is the IXC that uses the Oklahoma RTCs' facilities to originate its customer's calls and the IXC that uses the CMRS providers' network facilities to terminate the customer's calls. Consequently, the IXC, not the Oklahoma RTC, is effectively the reciprocal carrier with the CMRS provider – the CMRS provider originates and delivers its customers traffic to be terminated to end users connected to the

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<sup>17</sup> This is true for traffic handed off to an IXC that is terminated by the CMRS providers. Landline to landline interexchange traffic within mandatory expanded calling scopes that is originated utilizing Oklahoma RTC facilities is toll, not local traffic. The Oklahoma RTCs are not the originators or carriers of this toll traffic and consequently do not exchange traffic with the CMRS providers and do not owe compensation to the CMRS providers for the use of their facilities to terminate the interexchange traffic. The toll provider that originated the traffic, not the Oklahoma RTC, is responsible for this compensation. On the other hand, the CMRS providers do use Oklahoma RTC facilities to complete their customers' calls and therefore do owe compensation to the Oklahoma RTCs (as do landline carriers) for the use of these facilities.

<sup>18</sup> Oklahoma Corporation Commission, Order No. 399040, Cause Nos. PUD 950000117 and PUD 950000119.

<sup>19</sup> As an access provider, the RTC has no retail relationship with the customer for interexchange calling. The Oklahoma RTC has no responsibility to the customer for call origination or termination and collects no retail revenue from the customer for the interexchange call. Oklahoma RTCs receive no retail compensation from end users for originating or terminating intrastate interexchange calls. Unlike the CMRS providers, the Oklahoma RTCs do not expect compensation for the use of terminating facilities both from the end user and also from the carrier which uses those facilities to terminate its customer's calls.

Oklahoma RTC network and the IXC uses the Oklahoma RTC network to originate its customers calls and deliver them to the CMRS network for termination. In effect, there is a responsibility for reciprocal compensation for this interexchange traffic, but not between the CMRS carrier and the Oklahoma RTCs. The CMRS providers must seek compensation or reciprocal compensation from the true carrier of the traffic, the IXC or toll provider.

The Oklahoma RTCs became access providers for all interexchange traffic by Oklahoma Commission order.<sup>20</sup> This Commission Order provided that the RTCs may not carry calls beyond their exchange boundary, nor be the customers' service provider for any interexchange calling. Instead, SWBT was designated as the customer's interexchange carrier or toll provider for all intraLATA interexchange calls, including calls to CMRS carriers, originated by end users connected to the RTCs network facilities. The Oklahoma Commission's order limited the RTCs' provision of originating service for customers to local services provided within the RTCs' exchange boundary. Subsequently, state and federal rules required implementation of intrastate 1+/0+ presubscription for the Oklahoma RTCs. The Oklahoma RTC must, as a result of these rules, hand off all interexchange calls (previously handled exclusively by SWBT) to the customers' IXC or toll provider. Consequently, the Oklahoma RTC may not provide originating interexchange service to a customer connected to its network. FCC and Commission Orders require that all originating interexchange calls<sup>21</sup>, including those destined to be terminated on the CMRS Providers' networks, be handed off to the customers toll provider or IXC. Thus, the customer's carrier for these originating

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<sup>20</sup> Oklahoma Corporation Commission Order No. 399040, Cause Nos. PUD 950000117 and PUD 950000119

<sup>21</sup> Excluding true expanded area service calls which are solely LEC to LEC customer calling.

interexchange calls (the toll provider or IXC) is responsible for paying terminating compensation to all providers, including the CMRS Providers, whose networks are used to terminate the IXC or toll providers customers' interexchange calls.

In short, the Oklahoma RTCs do not originate the customer's call. The customer's IXC or toll provider originates interexchange intraMTA calls using an Oklahoma RTC's facilities and uses CMRS provider facilities to terminate the customer's traffic. The customers' toll provider or IXC that originates landline to wireless interexchange traffic and terminates that traffic to the CMRS Providers is responsible for compensating the CMRS Provider for the use of its facilities. Irrespective of the CMRS carrier assertions to the contrary, the Commission does not require the Oklahoma RTCs to pay compensation to the CMRS carriers, when the Oklahoma RTCs are not a co-carrier for the traffic, because they do not originate the customer's interexchange traffic. Consequently, the ILECs such as the Oklahoma RTCs should not be required to pay compensation to CMRS carriers for IXC or toll provider interexchange intraMTA traffic.

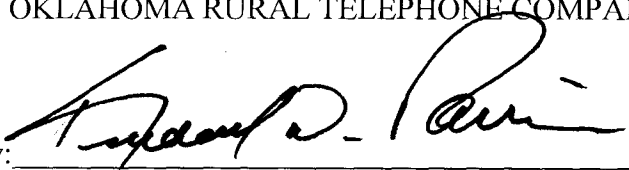
For the reasons presented herein, the Oklahoma RTCs urge the Commission to reject the CMRS carrier's Petition and permit ILECs to file and enforce tariffs for the transport and termination of traffic on their networks in the absence of an agreement. ILECs such as the Oklahoma RTCs initially began terminating CMRS carrier traffic under agreements which provided compensation for such use of their networks. Once these original methods of compensation were terminated, some other mechanism must be put in place. The fact that the CMRS carriers have not initiated negotiations to compensate ILECs for the use of their networks should not allow them to avoid their statutory duty to pay ILECs for the fair and reasonable cost of transporting and

terminating traffic on ILEC's network. Further, the Oklahoma RTCs urge the Commission to reaffirm that traffic originated by interexchange carriers is not subject to reciprocal compensation from ILECs such as the Oklahoma RTCs. The Commission should conclude that the interexchange carrier is the originating carrier and thus, subject to obligations for reciprocal compensation.

Respectfully submitted,

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